Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
	)	
Petition of the Multifamily Broadband Council	)	
Seeking Preemption of Article 52 of the	)	MB Docket No. 17-91
San Francisco Police Code	)	

COMMENTS OF ELAUWIT NETWORKS, LLC

I. INTRODUCTION.

Elauwit Networks, LLC hereby submits its initial comments to the Federal Communications Commission ("FCC" or "Commission") in response to the April 4, 2017 Public Notice in the above-referenced proceeding. The Commission's Public Notice seeks input on a petition submitted by the Multifamily Broadband Council ("MBC"). MBC's petition seeks a declaratory ruling that Article 52 of the San Francisco Police Code is preempted because Article 52 conflicts with the Commission's regulatory frameworks governing competitive access to inside wiring in multi-tenant buildings, bulk billing arrangements, and forced network sharing obligations, and because federal law and policy have "occupied the field."

For the reasons described below, the Commission should grant MBC's petitions.

II. BACKGROUND.

Elauwit Networks, LLC (Elauwit), which was formed in 2009 and is based in Charleston, SC, is a technology integrator that provides bulk Internet and television services to residential multi-tenant properties, in direct competition with larger, well-funded entities. Elauwit provides these services to a total of 192 properties in 40 states, serving a total of 115,000 beds. Our services are highly competitive and innovative – we offer wired and wireless Internet services with up to

10 Gigabit speeds to a property and up to 1 Gigabit speeds to end-user devices. These networks provide both Internet services to consumer devices and a reliable and robust network to connected building devices such as smart thermostats, access control, security camera, and sensor networks which detect water and electricity flows. Lastly, we offer competitive linear and non-linear video services delivered via a private closed radio frequency (RF) or Internet Protocol (IP) network, or over-the-top (OTT) from various competitive providers.

Although Elauwit does not currently provide service in San Francisco, Elauwit is compelled to submit these comments on MBC's petitions due to Article 52's clear anticompetitive effect and the negative consequences that would follow if similar laws are adopted in other cities.

III. ARTICLE 52 IMPOSES SEVERE CONSTRAINTS ON THE ABILITY OF COMPETITIVE PROVIDERS TO SERVE MULTI-TENANT BUILDINGS.

As MBC correctly observes, Article 52 distorts the competitive landscape by both overriding voluntary, contractual arrangements and forcibly taking privately owned property which are preconditions to the property owner capital investment to build advanced network technology in multi-tenant buildings. Elauwit depends on property owner investments in cabling infrastructure in order to deploy our innovative services for the use and enjoyment of tenants of multi-tenant properties. For competitive providers like Elauwit who do not self-fund their network buildouts through cash flows generated from complementary revenue streams (like advertising sales or municipal taxation), such real estate owner participation and cooperation is critical given the disruptive nature of deploying these systems and the substantial capital outlay required to construct and launch a system on a multi-tenant property. Simply put, if a property owner cannot realize a return on their investment or if that investment will open the door to the chaos generated from the forcible taking of their infrastructure under Article 52, that infrastructure investment will not be made.

In Elauwit's experience the optimal way to deliver Internet service to a tenant is though bulk service agreements between a property owner and a service provider. Bulk Internet services can be delivered without requiring the tenant to interface with customer service representatives, to take time from work or family to wait for a technician to activate service, provide for much faster and innovative service such as community-wide wireless roaming, and use economies of scale and high-capacity fiber commercial bandwidth purchases to deliver services at no or low cost to tenants. Bulk services agreements also provide ubiquitous Internet coverage to facilitate the delivery advanced building systems through connected devices and machines, sensor networks, air-quality monitoring, life-safety systems, and environment controls resulting in energy and water savings. As the Commission has recognized (Second Report and Order, MB Docket No. 07-51; released March 2, 2010), bulk billing arrangements provide "significant pro-consumer effects". Bulk arrangements allow companies like ours to offer reduced prices to customers by spreading fixed costs among many subscribers using common facilities and Internet circuit. However, bulk arrangements only work if the property owner is allowed to own and control their own infrastructure throughout the building and is allowed to contract with a single service provider to give undisturbed access to 100% of their occupiable units which Article 52 effectively disallows.

Additionally, the inability of a service provider to guarantee 100% carriage in a multi-tenant property may create contractual defaults with provisions and commitments related to bulk distribution rights of video content delivered from national programming providers (like HBO, Viacom, ABC/Disney/ESPN, and others) which requires that their content is delivered to 100% of the occupiable units in order to leverage customer advantageous bulk rights and rates. If Article 52 stands, the inability for a property owner to assure 100% carriage without violating bulk carriage provisions will create legal and operational issues across the bulk video industry

effectively eliminating the concept of bulk video distribution across the entire United States, yielding higher rates and eliminating the convenience delivered from bulk video agreements for millions of tenants of multi-tenant buildings.

Finally, the FCC's inside wiring rules, which Article 52 conflicts with, have played a major role in facilitating competition for communications services. By allowing a building owner to use inside wiring rules to craft bulk agreements with service providers such as Elauwit, services such as Gigabit Internet and ubiquitous wireless connectivity which is facilitated across those wires has become the norm in certain property types like student housing. Accordingly, Elauwit shares MBC's concerns that Article 52 will penalize property owners who have taken advantage of the FCC's rules, dissuade other property owners from exercising their rights under the FCC's rules in the first place, or incentivize property owners to try and avoid Article 52 by ceding their ownership rights over inside wiring to deep-pocketed incumbent providers. Article 52 opens the door to these types of schemes.

IV. ARTICLE 52 EXACERBATES THE DIGITAL DIVIDE.

As MBC has noted, bulk billing arrangements are typically used by property owners and service providers to provide affordable video and broadband services to shared-living environments like retirement and nursing homes, student housing, and lower- or fixed-income residents. These communities typically house residents that are underserved by traditional Internet and video providers. This is especially true in our service territory. Every property where we provide service is done so with bulk billing arrangements. We provide service to students who have little income to pay for connectivity or video television services themselves.

Proponents of Article 52 maintain that bulk billing arrangements will not be impacted by this ordinance since no rational competitor would enter a property that is served by a bulk

agreement, however, in reading the Article, it is clear that bulk agreements and property ownership of in-building infrastructure which is critical to the provision of bulk services are not precluded from the mechanics of ordinance.

If allowed to stand, Article 52 and other laws like it would disincentivize or eliminate bulk Internet or video arrangements and make it extremely difficult for certain multi-tenant buildings like student, senior, and low-income housing to deliver quality Internet (wired and wireless) or video to their tenants. If not for bulk service arrangements, the tenants of many multi-tenant buildings would increase, not reduce, the digital divide. As a result, consumers who depend on such arrangements for access to Internet or video will receive either no service at all, or services at higher prices and poorer service.

V. ARTICLE 52 IMPAIRS THE ABILITY OF COMPETITIVE PROVIDERS TO MAINTAIN A HIGH LEVEL OF CUSTOMER SERVICE.

In Elauwit's experience, a significant portion of service interruptions and related problems in multi-tenant properties are caused by issues relating to uncontrolled access to inside wiring by any entity other than the contracted service provider. Because Article 52 does not address how multiple providers on the same property must behave towards each other, the ordinance will only make these problems worse.

Specifically, the use of common wiring, communication rooms, and lock-boxes by two or more providers usually results in interference, which leads to service cutoffs and, eventually, loss of customers. This is especially true in student housing where unlike in conventional housing, which is rented by the unit, student housing typically rents by the *bed*. So if one student "occupant" in a three-bedroom unit requests service and the incoming provider takes the home run to that unit, it would deprive the residents of the *other* two bedrooms of the bulk service for which the property owner contracted. Under Article 52, one resident's "choice" would legally authorize slamming the

other residents of the unit with a new service provider or no service provider at all. That is, of course, in addition to the very real risk of wiring conflicts, in which *all* unit residents may find that, after one resident's request for a new ISP, they have lost their bulk video service and Internet.

Moreover, Elauwit often includes service level agreements ("SLAs") in our agreements with property owners. A typical SLA includes contractual thresholds for repairing service interruptions and outages, completing installations, and defining standards to maintain minimum bandwidth to a property. SLAs are an effective way for our company to distinguish itself from large providers that do not offer service level guarantees. These SLAs typically address issues such as speed of the network connection, uptime, responsiveness to issues, and may even require us to follow owner-specific contact guidelines with both management staff and residents and provides a threshold of technician professionalism or qualifications. Under Article 52, however, since SLAs are not required and most leverage an owner has over a service provider is eliminated, an SLA will be a thing of the past and real estate owner's will lose all incentive, motivation or ability to control the level of service given by a service provider to service their residents.

VI. CONCLUSION.

For the reasons discussed above, the Commission should find that Article 52 is preempted by federal law and policy.

Respectfully submitted,

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